

## TOWN OF LAMOINE

### BOARD OF APPEALS ORDINANCE 2015

#### 1. ESTABLISHMENT

Pursuant to 30-A MRSA Section 2691, The Town of Lamoine hereby establishes The Town of Lamoine Board of Appeals Ordinance.

#### 2. APPOINTMENT

- A. Appeals Board members shall be appointed by the Board of Selectmen and sworn by the clerk or another person authorized to administer oath.
- B. The Board shall consist of 7 members, 5 regular members and 2 alternates and all must be legal residents of the Town of Lamoine. The Board shall elect annually a Chairman, Vice Chairman, and Secretary from its membership by a majority vote of the regular members.
- C. The term of each member shall be 3 years.
- D. When there is a permanent vacancy, the Selectmen shall within 60 days of the occurrence, appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member ceases to be a voting resident of the Town of Lamoine. When a vacancy occurs, the Chairman of the Board shall immediately so advise the Board of Selectmen in writing. The Board of Selectmen may remove members of the Board of Appeals by unanimous vote, for cause, after notice and hearing.
- E. A municipal officer or the spouse of a municipal officer may not be a member.
- F. When there is a permanent vacancy of either a full or associate member, the Secretary shall immediately notify the Board of Selectmen. The Selectmen shall have 30 days to appoint a person to serve for the unexpired term.

#### 3. OFFICERS AND DUTIES

- A. The officers of the Board shall consist of a Chairman, Vice Chairman, and Secretary, who shall be elected annually by a majority of the Board.
- B. CHAIRMAN. The Chairman shall perform all the duties required by law and shall preside at all meetings of the Board. The Chairman shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chairman will also be the official spokesman of the Board.
- C. VICE CHAIRMAN. The Vice Chairman shall perform the duties of the Chairman when the Chairman is not available.
- D. SECRETARY. The Secretary shall keep minutes of all Board proceedings, showing the vote of the Board on each question. The Secretary will arrange proper and legal notice of hearings and attend to other duties as are normally

carried out by a secretary. The Secretary shall keep a record of all hearings including: subject of the hearing, identification of each participant, and agreements made between parties and the Board regarding procedures, the testimony presented, findings of fact and conclusions, the decisions of the Board and the date of issuance of the decision. All records to be maintained or prepared by the secretary are public records. They shall be filed in the Town Office and may be inspected at reasonable times.

4. CONFLICT OF INTEREST:

A. Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

B. The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member or the person's immediate family (grandfather, father, wife, son, grandson, e.g.) or his employer or the employer of any member of the person's immediate family. A Board member who owns or has an interest in abutting property shall be deemed to have a 'conflict of interest'

5. POWERS AND LIMITATIONS:

A. The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:

1. The Board may interpret the provisions of any applicable town ordinance, which is called into question.
2. The Board may review Planning Board decisions with regard to the issuance of a special exception permit or conditional use permit in strict compliance with any applicable town ordinance.
3. The Board may grant a variance only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
  - a. That the land in question cannot yield a reasonable return unless the variance is granted;
  - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - c. That the granting of a variance will not alter the essential character of the locality; and
  - d. The hardship is not a result of action taken by the applicant or owner.
4. The Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit, variance or other required approval, or any application therefore, including, the grant, conditional grant, denial, suspension, or revocation of any such license permit, variance or their approval (hereinafter a "Decision")
  - a. Rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;

- b. Rendered by the Code Enforcement Officer relating to the Building Code enforcement pursuant to any Town Ordinance.
- c. Rendered by the General Assistance Administrator pursuant to the Maine Statutes relating to General Assistance.
- d. Rendered by the Planning Board or the Selectmen pursuant to the Subdivision Regulations or the Maine subdivision statute;
- e. Rendered by the Selectmen or the Assessors pursuant to 36 M. R. S. A. sect 841 and 30 M.R. S. A. sect 2060 (relating to the abatement of taxes);
- f. Rendered by the Code Enforcement Officer pursuant to the Building Code.
- g. Rendered by the Selectmen relating to grievances and disciplinary procedures with respect to Town officers.

#### 6. MEETINGS.

- A. The Chairman may call special meetings of the Board. At least 10 days notice of the time, place and business of the meeting shall be given each member of the Board, the Selectmen, the Planning Board and the Code Enforcement Officer.
- B. The Chairman shall call a special meeting within ten (10) days of receipt of a written request from any member of the Board whose request specifies the matter to be considered at such special meeting.
- C. All meetings of the Board shall be open to the public except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for purposes allowed by law.

#### 7. VOTING.

- A. A quorum shall consist of three members of the Board.
- B. No hearing or meeting of the Board shall be held, nor any action taken, in absence of a quorum, however, the member present shall be entitled to request the Chairman to call a special meeting for a subsequent date.
- C. All matters shall be decided by a vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the members attending.
- D. A tie vote shall be considered a rejection of the application under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing a quorum for such matter.
- F. The Chairman shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent for a substantial portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.

#### 8. APPEAL PROCEDURE

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section 5 must file such application for appeal, in writing on forms provided within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal at the Town Office to the attention of the Chairman, Lamoine Board of Appeals, setting forth

the ground for his/her appeal.

- B. The fee to accompany applications for appeal shall be set by the Selectmen. Checks are to be made payable to the Town of Lamoine Board of Appeals.

#### 8. PUBLIC HEARINGS.

- A. The Board shall schedule a public hearing on all appeals within thirty (30) days of the filing of a completed appeal application.
- B. The Board shall cause notice of the date, time and place of such hearing, to the person making the application and to be published in a newspaper of general circulation in the municipality, at least ten (10) days prior to the hearing. The Board shall also cause notice of the hearing to be given to the Selectmen, Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least twenty (20) days prior to the hearing.
- C. The Board may provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
- D. The Board Chairman will determine the order of presentation at the public hearing. All parties will be given the opportunity to present their case.
- E. The Board may receive comments and questions from observers and interested citizens who wish to express their views.
- F. The Board may call its own witnesses, such as the Code Enforcement Officer.
- G. The Board may have a de novo or appellant hearing based on current laws and regulations. The Board will decide the type of hearing.
- H. The hearing will conclude when all parties have been heard. If Additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.
- I. The Board may waive any of the above rules if good cause is shown.
- J.

#### 9. DECISIONS

- A. The Secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The Secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. The records are public and shall be posted or filed in the Lamoine Town Office and inspected at reasonable times.
- B. The transcripts of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law, or discretion presented and the appropriate order, relief, or denial thereof.
- C. The Board may reverse the decision, or failure to act, of the Code Enforcement Officer or Planning Board only upon a finding that the decision, or failure to act was clearly contrary to specific provisions of the Ordinances of the Town of Lamoine or unsupported by substantial evidence in the record.

- D. Decisions of the Board shall be filed or posted in the Town Office and shall be made part of the public record. The appellant shall be notified in writing within seven (7) days of the decision of the Board. The notice will include the finding of fact, conclusions and may refer to evidence in the record upon which the decision is based.
- E. The Board may reconsider and decision. The Board must decide to Reconsider any decision, notify all interested parties and make any change in its original decision within thirty (30) days of its prior decision. A meeting to decide whether to reconsider shall be called by the Chairman. The Board may conduct additional hearings and receive additional testimony. Reconsideration may be, but not limited to, one of the following reasons:
  - a. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based or
  - b. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction

#### 10. APPEALS

- A. The decision of the Board of Appeals may be taken, within thirty (30) days after the decision is rendered, by the party to the decision to Superior Court in accordance with State Law.

#### 11. SEVERABILITY.

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.